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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,791	01/22/2004	Brian D. Reimer	85384-102 ADB	2293

23529 7590 03/11/2005

ADE & COMPANY  
1700-360 MAIN STREET  
WINNIPEG, MB R3C3Z3  
CANADA

EXAMINER
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PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/761,791

Applicant(s)

REIMER ET AL.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **Detailed Action**

#### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the rear gate panels" in line 2. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 7-8, 11 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent No. 6,805,078 to Zimmerman et al.

Referring to claim 1, Zimmerman et al. discloses a livestock sorter comprising, side walls – at 42,44,62,64, defining a confining container for an animal to be sorted – see for example figure 1, a base plate – at 60, on which the animal stands when confined in the container – see for example figure 1, a weighing scale – at 50-58, supporting the base – at 60, for obtaining a weight of the animal when confined as it stands on the base plate – see for example figure 1, a front gate – at 22-26, at the front of the container moveable from an open position allowing passage of the animal to a closed position for preventing forward movement of the animal while it is being weighed – see for example figures 8-10, a rear gate – at 30,111-118, at the rear of the container moveable from an open position allowing passage of the animal to a closed position for preventing rearward movement of the animal while it is being weighed – see for example figures 13-16, the front gate comprising a left side vertical gate panel – at 24, and a right side vertical gate panel – at 26, each of the gate panels being pivotal about a vertical axis at an outer edge of the gate panel from the closed position extending across the container generally at right angles to a mid line toward the mid line through an angle of the order of 90 degrees to an open position

Art Unit: 3643

generally parallel to the mid line – see for example figures 8-19, and front and rear drive construction – see figures 8-10 and 13-16, for effecting movement of the front and rear gates respectively between the open and closed positions – see for example figures 8-10 and 13-16, the drive construction comprising, a left lever – at 98, connected to the left gate panel and arranged such that pivotal movement of the left lever about the axis of the left gate panel causes the pivotal movement of the left gate panel – see for example figures 8-10, a right lever – at 100, connected to the right gate panel and arranged such that pivotal movement of the right lever about the axis of the right gate panel causes the pivotal movement of the right gate panel – see for example figures 8-10, an actuating member – at 96B, moveable along the midline of the container in response to an actuating force from a drive member – at 96, a left link – at 102, pivotally connected to the actuating member and to the left lever – see for example figures 8-10, a right link – at 103-104, pivotally connected to the actuating member and to the right lever – see for example figures 8-10, the actuating member, the links and the levers being arranged such that movement of the actuating member to a first position along the midline causes the actuating member to provide a force on the levers through the links to pivot the gate panels to the open position and such that movement of the actuating member to a second position along the midline causes the actuating member to provide a force on the levers through the links to pivot the gate panels to the closed position – see for example figures 8-10, the actuating member, the links and the levers being arranged such that in the second position with the gate panels in the closed position force from the animal on the gate panels tending to open the gate panels provides substantially no force through the links and the actuating member to the drive member – see for example figures 8-10. Applicant states in claim 1, that the front and rear drive constructions each

Art Unit: 3643

contain levers, links and actuating members for moving the left and right gate panels, however as seen in claim 1, applicant states that only the front gate has left and right gate panels, and therefore the claim is examined as only the front gate having the right and left gate panels and corresponding levers, links and actuators.

Referring to claim 2, Zimmerman et al. discloses the links and the actuation member are arranged in an over center position in the closed position of the gate panels – see for example figures 8-10.

Referring to claim 7, Zimmerman et al. discloses there is provided a slide guide – see at the cylinder at 96, for guiding movement of the actuating member along the midline – see for example figure 1.

Referring to claim 11, Zimmerman et al. discloses the drive member – at 96, comprises a cylinder and piston mounted on the centerline – see for example figures 8-10.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,979,365 to Sorraghan et al.

Referring to claim 3, Zimmerman et al. does not disclose the links are arranged substantially at right angles to the mid line when the gate panels are in the closed position. Sorraghan et al. does disclose the links – at 15-16, are arranged substantially at right angles to the mid line when the gate panels – at 8, are in the closed position – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zimmerman et al. and add the links and gate panels of Sorraghan et al., so as to allow for the device to be easily movable from open to closed positions.

Referring to claim 4, Zimmerman et al. as modified by Sorraghan et al. further discloses the links are moved to a position slightly beyond a right angle to the midline so as to be over center when the gate panels are in the closed position – see for example figure 1 of Zimmerman et al. and figure 1 of Sorraghan et al.

Referring to claim 5, Zimmerman et al. does not disclose the actuating member defines two pivot points each for a respective one of the links wherein the two pivot points are located symmetrically one at side of the midline. Sorraghan et al. does disclose the actuating member – at 13, defines two pivot points – see proximate 19, each for a respective one of the links wherein the two pivot points are located symmetrically one at each side of the midline – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zimmerman et al. and add the links and gate panels of Sorraghan et al., so as to allow for the device to be easily movable from open to closed positions.

Referring to claims 6, Zimmerman et al. as modified by Sorraghan et al. further discloses the actuating member comprises a transverse bar at right angles to the midline with the two pivot points located symmetrically one at each end of the bar – see at 19 in figure 1 of Sorraghan et al.

Art Unit: 3643

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al. as applied to claim 7 above, and further in view of U.S. Patent No. 4,280,448 to Ostermann.

Referring to claim 8, Zimmerman et al. does not disclose the actuating member includes a plastic slide block which slides a along the slide guide. Ostermann does disclose a slide block – at 143, which slides along the slide guide – at 92 – see for example figures 5-7 of Ostermann.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zimmerman et al. and add the sliding block of Ostermann, so as to control the movement of the actuating mechanism. Zimmerman et al. as modified by Ostermann does not disclose the sliding block is plastic. However, it would have been obvious to one of ordinary skill in the art to take the device of Zimmerman et al. as modified by Ostermann and add the sliding block being plastic, so as to allow for the device to be made lightweight and durable.

Referring to claim 9, Zimmerman et al. as modified by Ostermann further discloses a channel – proximate 92, facing inwardly toward the midline and receiving a side portion of the slide block – at 143 – see figures 5-7 of Ostermann. Zimmerman et al. as modified by Ostermann does not disclose a pair of C-shaped channels. However, it would have been obvious to one of ordinary skill in the art to take the device of Zimmerman et al. as modified by Ostermann and add the pair of C-shaped channels, so as to control the movement of the sliding block.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al. as modified by Ostermann as applied to claim 7 above, and further in view of Sorraghan et al. Zimmerman et al. as modified by Ostermann does not disclose the slide guide provides an end stop for locating the actuating member in an over center position when the gate panels are in the closed position. Sorraghan et al. does disclose the slide guide – at 13, provides an end stop – see



Art Unit: 3643

proximate 18, for locating the actuating member in an over center position when the gate panels are in the closed position – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zimmerman et al. as modified by Ostermann and add the slide guide of Sorraghan et al., so as to control the movement of the sliding block.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,239,711 to Downey et al.

Zimmerman et al. does not disclose the front gate panels open from the closed position forwardly and the rear gate panels open from the closed position rearwardly. Downey et al. does disclose the front gate panels open from the closed position forwardly and the rear gate panels open from the closed position rearwardly – see for example figures 1 and 19. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Zimmerman et al. and add the opening of the front gate forwardly and the rear gate rearwardly of Downey et al., so as to allow for the entry and exit of the animal from the device to be controlled.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to livestock sorting and weighing devices in general:

U.S. Pat. No. 2,204,389 to Vater et al. – shows animal weighing device

U.S. Pat. No. 4,134,366 to Elliott – shows animal sorting device

Art Unit: 3643

U.S. Pat. No. 4,138,968 to Ostermann – shows animal sorting device

U.S. Pat. No. 4,336,768 to Wagner – shows animal sorting device


U.S. Pat. No. 5,988,106 to van den Berg – shows animal weighing device

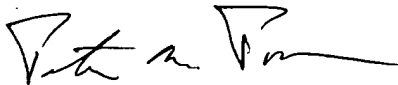
JP Pat. No. 5-268851 – shows animal weighing device

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David Parsley  
Patent Examiner  
Art Unit 3643

  
**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**  
3/7/05